

DENNIS D. MILLER (SBN 138669)
EUGENE CHANG (SBN 209568)
STEIN & LUBIN LLP
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Telephone: (415) 981-0550
Facsimile: (415) 981-4343
dmiller@steinlubin.com
echang@steinlubin.com

Attorneys for Defendants
DAVID J. KILLIAN, ANTHONY M. MAROTTA,
and ROSA COURT, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCENT KAMYAR VAGHAR,

Plaintiff,

v.

DAVID J. KILLIAN; ANTHONY M.
MAROTTA; and ROSA COURT, LLC, a
New Jersey limited liability company,

Defendants.

Case No. C 07 4083 MMC

**DECLARATION OF DAVID J. KILLIAN
IN SUPPORT OF MOTION TO DISMISS
SECOND AMENDED COMPLAINT OF
PLAINTIFF VINCENT KAMYAR
VAGHAR OR, IN THE ALTERNATIVE,
TO TRANSFER VENUE**

Date: November 16, 2007
Time: 9:00 a.m.
Courtroom: 7
Honorable Maxine M. Chesney

I, David J. Killian, declare:

1. I am an adult individual over eighteen years of age and a co-managing member of Rosa Court, LLC ("Rosa"). I make this declaration in support of Defendants' Motion to Dismiss the Second Amended Complaint (the "Second Complaint") of Plaintiff Vincent Kamyar Vaghar ("Vaghar") or, in the Alternative, to Transfer Venue of this matter to the Eastern District of Pennsylvania. I have personal knowledge of the matters stated in this declaration and could and would competently testify thereto if called upon as a witness at trial or any other proceeding in this matter.

65040002/356949v1

Case No. C 07 4083 MMC

1 **A. Overview:**

2 2. In paragraph 2 of the Second Complaint, Vaghar alleges that:

3 “This court has jurisdiction over each Defendant, because each
4 Defendant has purposefully availed himself or itself of the benefits
5 and protections of this jurisdiction.”

6 3. Despite Vaghar’s conclusory assertions to the contrary, I have never agreed
7 to defend or otherwise litigate a claim with him involving the conveyance of real estate located in
8 Pennsylvania in any court within the State of California. My understanding of this lawsuit is that
9 Vaghar wants the Defendants to convey to him title to a condominium that is owned by Rosa and
10 located in Philadelphia.

11 **B. All of My Contacts Have Been With the Commonwealth of**
12 **Pennsylvania:**

13 4. I am a citizen and domiciliary of the Commonwealth of Pennsylvania.

14 5. I am self-employed as a local real estate developer operating exclusively in
15 the Commonwealth of Pennsylvania and, in particular, in the county of Philadelphia where I
16 reside.

17 6. As noted above, I am the co-managing member of Rosa, along with Rosa’s
18 co-managing member, Anthony Moratta (“Marotta”).

19 7. Rosa is a single purpose entity whose only business activities relate to the
20 ownership and development of the real estate project referred to in Exhibit “A” of the Second
21 Complaint (at paragraph “C”) -- at the “*intersections of Federal and Juniper Streets and Federal*
22 *and Clarion Streets in Philadelphia*” -- where the underlying dispute involving the Defendants’
23 alleged duty to convey a condominium to Vaghar is physically located (the “Project”).

24 8. All of Rosa’s activities are limited to developing real estate located
25 exclusively in the county of Philadelphia within the Commonwealth of Pennsylvania. Rosa has
26 no other business offices, assets or business operations anywhere other than in the
27 Commonwealth of Pennsylvania (and, in particular, in the county of Philadelphia) and its
28 administrative office located in New Jersey.

65040002/356949v1

2

Case No. C 07 4083 MMC

DECLARATION OF DAVID J. KILLIAN IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT OF
PLAINTIFF VINCENT KAMYAR VAGHAR OR, IN THE ALTERNATIVE, TO TRANSFER VENUE

C. Lack of Contacts With California:

9. I have never resided in the State of California.

10. I have never purchased or held an interest in real property located in the State of California.

11. I have never been employed, nor have I ever conducted business, in the State of California.

12. I have never attended classes as a student in the State of California.

13. I have never maintained any checking, depository or investment accounts with any financial institution located within the State of California.

14. I have never solicited any resident of the State of California (including Vaghar) to conduct business with me, or any entity in which I am affiliated, including Rosa.

15. Conversely, my only physical connections with the State of California have been limited to those of a tourist during vacations.

D. All of the Parties' Contacts With One Another Have Been With the Commonwealth of Pennsylvania:

16. Although not mentioned anywhere in the Second Complaint, Vaghar has traveled to Philadelphia, Pennsylvania on at least 12 separate occasions over the past 4½ years solely for the purpose of investigating, negotiating over, and ultimately participating (as a business partner) in one or more real estate projects that the individual Defendants are currently developing in Philadelphia, Pennsylvania.

17. For example, the loan documents (referred to in paragraphs 9-11 of the Second Complaint as the "promissory note" and the "personal guaranty") reflecting, in part, Vaghar's involvement in Rosa's development of the Project, were both presented by Vaghar to Moratta and me, and ultimately signed by us, in Philadelphia, Pennsylvania.

18. Thereafter, Vaghar visited Philadelphia, Pennsylvania on at least 6 separate occasions solely for the purpose of: (i) monitoring the Project; (ii) weighing in on decisions relating to Rosa's progress with respect to the completion of the Project; and (iii) discussing with Marotta and me various business issues relating to the Project.

1 19. Later, in or around the late summer and early fall of 2006, Vaghar began to
2 contact me in Philadelphia about his desire to have Moratta and me execute the "Agreement for
3 Settlement of Debt" (the "Agreement") that forms the factual predicate for the Second Complaint
4 he filed in California.

5 20. Vaghar then traveled to Philadelphia, Pennsylvania again to physically
6 present Marotta and me with the Agreement for us to sign.

7 21. Notwithstanding the language set forth in paragraph 3.6 of the Agreement
8 to the contrary, that document was not "negotiated" by me in California, but rather over cell
9 phone calls initiated by Vaghar with me while I was working in Philadelphia, Pennsylvania.

10 22. Likewise, the Agreement was not "entered into" by me in California, but
11 rather signed by all four parties in Philadelphia during a lunch break at the Project when Vaghar
12 was walking the Project with Moratta and me.

13 23. Neither Rosa nor I ever requested that a lawyer review the Agreement
14 before we physically signed the document in Philadelphia, Pennsylvania.

15 24. Ultimately, Vaghar filed suit against Rosa, Moratta and me in this court.
16 Despite doing so in California, he did not ask Moratta and me to come to California to discuss the
17 lawsuit or to accept service of his original complaint.

18 25. Rather, Vaghar traveled to Philadelphia, Pennsylvania again (under the
19 pretense of another site inspection at the Project) during which time he met with Moratta and me,
20 and then immediately summoned a third party to approach us to place a copy of his original
21 complaint (dated August 8, 2007) in our hands.

22 Executed this 5th day of October, 2007, in the Commonwealth of Pennsylvania,
23 County of Philadelphia.

24 I declare under penalty of perjury under the laws of the United States that the
25 foregoing is true and correct.

26 

27 David J. Killian

28 65040002/356949v1

4

Case No. C 07 4083 MMC

DECLARATION OF DAVID J. KILLIAN IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT OF
PLAINTIFF VINCENT KAMYAR VAGHAR OR, IN THE ALTERNATIVE, TO TRANSFER VENUE